

Narayan Singh Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Feb-12-1993

Reported in : 1994CriLJ1142

Judge : S.K. Chawla, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7(1), 16 and 16(1);
Prevention of Food Adulteration (Amendment) Act, 1976

Appeal No. : Criminal Revn. No. 32 of 1990

Appellant : Narayan Singh

Respondent : State of M.P.

Advocate for Def. : V.G. Khot, A.G.P.

Advocate for Pet/Ap. : R.P. Upadhyay, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

S.K. Chawla, J.

1. By this revision the accused challenges his conviction and sentence under Section 7(1) read with Section 16(1)(a)(i) of the [Prevention of Food Adulteration](#)

[Act, 1954](#), recorded by the trial Court and affirmed by the appellate Court.

2. The prosecution case was that on 28-10-1985, at about 8.30 a.m., applicant Narayan Singh was seen carrying milk in two canisters slung to his cycle in Civil Lines, Datia. Food Inspector Ram Hazur Shrivastava (P.W. 1) stopped him and purchased a sample of milk from him measuring 660 ML. The applicant gave out that the milk was cow milk. The sample milk was put into 3 glass phials after adding prescribed quantity of formalin in each. Phials were duly packed and sealed. One of the phials was sent by the Food Inspector to Public Analyst, Bhopal for analysis. The Public Analyst, vide his report Ex. P-10, reported that the sample milk contained fat 4.0% and solids non-fat (SNF) 5.81%. This was below the standard prescribed for cow-milk and was therefore adulterated. The applicant was convicted under Section 7(1) read with Section 16(1)(a)(i) of the [Prevention of Food Adulteration Act, 1954](#), by the two Courts below. The sentence awarded by the trial Court and maintained by the appellate Court was rigorous imprisonment for 6 months and a fine of Rs. 1000/-, in default to further simple imprisonment for 3 months.

2A. The first point urged by Shri R.P. Upadhyaya, learned Counsel for the applicant, was that appointment of Ram Hazur Shrivastava (P.W. 1) as Food Inspector was not properly proved. It was urged that Ram Hazur Shrivastava (P.W. 1) in his evidence had produced a photostat copy of an alleged notification issued by the Local Health Authority, District Datia, authorising him, besides some others, to act as Food Inspector under the [Prevention of Food Adulteration Act, 1954](#) for Datia District. It was submitted that the original notification issued by the Local Health Authority should have been produced for inspection of the Court and then only the photo-stat copy could have been marked as Ex. P-1. Since the photo-stat copy was only produced, it was wrongly marked as an exhibit and it did not properly prove the appointment in question. I find that this objection was not taken at any time during trial. Had it been taken, there would have been no difficulty for the prosecution to have produced the original notification of the Local Health Authority, Datia. Such a challenge cannot be permitted to be raised for the first time either in appeal or revision. In fact, this challenge is also not one of the grounds taken in the present revision petition. It is too late in the day for the

applicant to raise this kind of objection for the first time and that too beyond his revision petition.

3. It was next urged that there was no evidence that the milk was actually sold by the applicant to anybody. Although the evidence of Food Inspector Ram Hazur Shrivastava (P.W. 1) was that applicant was supplying milk to one Rakesh Kumar, that evidence could not be believed because Rakesh Kumar was not examined as a prosecution witness. On the other hand, Rakesh Kumar was examined by the applicant as a defence witness and he deposed that he did not even know the applicant, muchless had he purchased any milk from him. There is no force in this contention. The evidence of Food Inspector Ram Hazur Shrivastava (P.W. 1) shows that the applicant was carrying milk in two canisters slung to his cycle. That would show that the applicant was a milk-vendor. Rakesh Kumar (D.W. 1) is a literate person and he admitted that he had signed Exhibits P-2, P-3 and P-4. He wanted it to be believed that he had signed those papers without reading them, which makes a heavy demand on human credulity. He was rightly disbelieved by the trial Court. It was amply proved from the evidence of Food Inspector Ram Hazur Shrivastava that the applicant was a milk vendor who was seen carrying milk in two canisters on his cycle. The milk being carried by him was therefore meant for sale. At any rate, the Food Inspector had purchased a sample of milk from him on payment of price of Rs. 2/-, vide receipt Ex. P-3. A sale for analysis is expressly defined as sale under the Act, vide Clause (xiii) of Section 2. Surprisingly enough, learned Counsel for the applicant relied on the decision, Mohammad Yamin v. State of U.P., reported in AIR 1973 SC 484 : (1972 Cri LJ 1198). That decision provides a complete answer to the contention of the applicant, since it lays down that a sale to a Food Inspector is a sale for the purpose of Section 16 of the Act, and that the article of food sold to the Food Inspector need not have been taken from a larger quantity kept for sale and further that the person by whom the article of food was sold to the Food Inspector need not be a dealer as such in the article. The decisions of the Supreme Court in Mangaldas v. Maharashtra State, AIR 1966 SC 128 : (1966 Cri LJ 106), Food Inspector Calicut v. C. Gopalan, AIR 1971 SC 1725 : (1971 Cri LJ 1277) and State of Tamil Nadu v. R. Krishnamurthy, AIR 1980 SC 538 : (1980 Cri LJ 402) are also to the same effect.

4. It was next urged that conviction of the applicant could not have been based on the sole testimony of Food Inspector Ram Hazur Shrivastava (P.W. 1). Nothing was brought out nor placed before this Court from the evidence of this witness that might go to detract from his credibility. He has no animus or hostility against the applicant. He was discharging a public function in purchasing an article of food for analysis. He could not be supposed to falsely implicate the applicant. It is not the law that the evidence of Food Inspector must necessarily receive corroboration from independent witnesses before it is acted upon. It may be proper here to reproduce what the Supreme Court observed on this matter in *State of U.P. v. Hanif* (1992) 3 SCC 100 : (1992 Cri LJ 1429 at p. 1431) :--

It is not the law that the evidence of Food Inspector must necessarily need corroboration from independent witnesses. The evidence of Food Inspector is not inherently suspected, nor be rejected on that ground. He discharges the public function in purchasing an article of food for analysis and if the article of food so purchased in the manner prescribed under the Act is found adulterated, he is required to take action as per law. He discharges public duty. His evidence is to be tested on its own merits and if found acceptable the Court would be entitled to accept and rely on to prove prosecution case.

5. It was then urged that it was not established from the evidence of the Food Inspector that the phials, in which the sample milk was placed, were really empty. The contention has no foundation. Food Inspector Ram Hazur Shrivastava (P.W. 1) in his evidence expressly stated that phials were clean, dry and odourless. If the phials were having liquid, i.e. not empty, they could not have been dry. It was also contended that the receipt Ex. P-3 and Panchanama Ex. P-4 were not properly proved, since Food Inspector Ram Hazur Shrivastava (P.W. 1) in his evidence simply stated that they were signed by him and the witnesses, without stating the names of witnesses. Similarly, the portions where the witnesses had signed these documents were not marked. Such kind of submission deserves to be simply mentioned, needing no comment.

6. In final submission, Shri R.P. Upadhyaya, learned Counsel for the applicant, prayed for leniency being shown to the applicant, particularly because the crime is

an old one said to have been committed 8 years back. It was submitted that the applicant has paid the entire fine of Rs. 1000/- imposed on him and that should be considered sufficient punishment. I find that Section 16 of the Prevention of Food Adulteration Act, was recasted by Act No. 34 of 1976, which came into force on 1-4-1976. The provisions of the recasted section applies to offences committed after 1-4-1976, when the recasting was done. The offence in the present case was committed on 28-10-1985, i.e. much after recasted section came into force. The scheme of the recasted section is that with respect to offences falling under Section 16(1), a minimum sentence of 6 months and a fine of Rs. 1000/- is prescribed. If special and adequate reasons are mentioned and the offence falls within the first proviso to Section 16(1), like the offence under consideration in this case, then a lesser minimum sentence of 3 months and a fine of Rs. 500/- is prescribed. But in no case, meaning thereby that even when adequate and special reasons exist, no sentence lesser than the lower minimum sentence can be given.

7. To a similar submission that because the crime is an old one, a lenient sentence should be imposed, the Supreme Court had the following to say in Hanif s case (1992 Cri LJ 1429 at p. 1432) (supra) :

It is next contended that the sale of adulterated milk was on December 3, 1978 and that the long lapse of time is a cause to take a lenient view in the matter. In view of the fact that after Amending Act 34 of 1976, the sentence imposed by the Courts below is minimum and that, therefore, there is no scope warranting interference.

There is, therefore, no scope warranting interference, since the two Courts below visited on the applicant minimum sentence.

8. In the result, this revision fails. Conviction of the applicant Narayan Singh under Section 7(1) read with Section 16(1)(a)(i) of the [Prevention of Food Adulteration Act, 1954](#) and sentence of rigorous imprisonment for 6 months and fine Rs. 1000/- , in default to further simple imprisonment for 3 months, are maintained. The applicant shall surrender to his bail and serve out the remaining sentence. The revision is dismissed.

